

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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JOSE M. GONZALEZ,

Plaintiff,

DECISION AND ORDER

16-CV-6652L

v.

CITY OF ROCHESTER, et al.,

Defendants.

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On January 25, 2022, plaintiff's counsel filed a Notice of Suggestion of Death (Dkt. #26), stating that the sole plaintiff in this action, Jose M. Gonzalez, had died on or about August 13, 2021. Counsel also filed a copy of plaintiff's Certificate of Death. (Dkt. #26-1.)

Pursuant to Rule 25(a) of the Federal Rules of Civil Procedure, the Court entered a text order on March 16, 2022, giving the parties 90 days to make a motion for substitution, and stating that if no such motion were filed during that timeframe, the action would be dismissed. (Dkt. #27.)

More than 90 days have elapsed since the entry of that text order, and no motion for substitution has been made, nor has any other activity occurred in the action. Accordingly, the action must be dismissed. *See Fed. R. Civ. P. 25(a); Chobot v. Powers*, 169 F.R.D. 263, 267 (W.D.N.Y. 1996) ("[A]s more than ninety days have passed since such service [of the suggestion of the plaintiff's death], and as there has been no motion pursuant to Rule 25(a)(1) to substitute a party on behalf of [the plaintiff], dismissal of the action is appropriate").

**CONCLUSION**

The complaint in this action is dismissed pursuant to Fed. R. Civ. P. 25(a)(1).

IT IS SO ORDERED.



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DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
October 4, 2022.